(2)

No. 84-835

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

STATE OF NEW JERSEY,
Department of Corrections,
Petitioner

v.

RICHARD NASH,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE AMICI CURIAE STATES OF PENNSYLVANIA, ALABAMA, ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, INDIANA, KANSAS, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, MISSOURI, NEBRASKA, NEVADA, NEW HAMPSHIRE, NORTH CAROLINA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, VERMONT, WASHINGTON, WEST VIRGINIA, WISCONSIN AND WYOMING IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Question Presented

Whether Article III Of The Interstate Agreement On Detainers Applies To A Detainer For Violation Of A Probationary Sentence Entered After Conviction By Interpreting The Phrase "Untried Indictment, Information Or Complaint" To Encompass Such A Detainer?[1]

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[1]Petitioners raise an additional question regarding application of the Interstate Agreement on Detainers to the specific facts of this case. Amici take no position on that issue.

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IN
SUPPORT OF PETITION FOR WRIT
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ON BEHALF OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INTEREST OF AMICI

This petition raises an important question regarding interpretation of the Interstate Agreement on Detainers (Agreement).[2] Article III of the Agreement obligates a prosecutor to bring an out-of-state prisoner to trial within 180 days of the prisoner's delivery of a written notice of his request for final disposition of "any untried indictment, information or complaint." Failure to return the prisoner permits a court to dismiss the untried charge with prejudice and to order that the detainer based on the

[2]The Interstate Agreement on Detainers is a uniform compact approved by Congress and enacted into law by forty-eight states, the District of Columbia and the United States. As congressional consent transforms the Agreement into a law of the United States, its construction presents a federal question. Adams v. Cuyler, 449 U.S. 433, 438 (1981).

charge have no effect. The decision of the Court of Appeals for the Third Circuit unsettles an otherwise uniform interpretation of the Agreement by broadening the application of Article III to permit a sentenced prisoner to compel his return for a probation revocation hearing. The amici states, all signatories to the Agreement, submit that if the Third Circuit's opinion stands, a new and substantial administrative and fiscal burden will be placed on the signatory states' limited personnel and financial resources without providing the salutary effect perceived to exist by the Court of Appeals. The conflict caused by the opinion of the Third Circuit, in a previously uniform interpretation of the

Agreement[3] affects all party states since any might have a detainer lodged against a prisoner confined in the states of the Third Circuit.

The considerable confusion which this split of authority creates cannot be over-emphasized. Each detainer case involves two states, one of which may be within the Third Circuit and the other not. The uncertainty regarding the application of the Agreement to cases in which only one of the states is within the Third Circuit creates serious difficulties for all of the amici. If,

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[3] While one district of an intermediate state court of appeals had ruled that the Agreement is applicable to a probation violation detainer, Gaddy v. Turner, 376 So.2d 1225 (Fla. App. 1979) and Lorenzo v. State, 422 So.2d 1058 (Fla. App. 1982), it subsequently abandoned this holding in Irby v. State of Missouri, 427 So. 2d 367 (Fla. App. 1983), upon review of the otherwise uniform interpretation finding the Agreement inapplicable to such a detainer.

as we argue along with petitioners, the Third Circuit's decision is erroneous, enormous cost will be incurred without reason. Amici, accordingly, have a substantial interest in the outcome of this case.

Summary of Argument

The Court of Appeals for the Third Circuit has decided a question of federal law as to the proper interpretation of Article III of the Agreement in a way which conflicts with the only other court of appeals which has addressed the issue and with all four state courts of last resort which have addressed the issue.

The Court of Appeals' decision ignores the plain language of the statute and renders a phrase limiting its scope surplusage. The assumptions used by the Court of Appeals as the foundation from which to extrapolate its policy interpretation of the relevant language are faulty. The policy the court attempts to advance by its expanded application of the Agreement to

permit prisoners to resolve detainers for probation violation, a policy it asserts is consonant with the "proper allocation of society's resources" requires legislative action - it is not a proper judicial resolution.

Reasons for Granting the Writ

1. The Court of Appeals for the Third Circuit has rendered a decision on a federal question which is in conflict with the decisions of another court of appeals and four state courts of last resort.

Recently, the Court of Appeals for the Ninth Circuit expressly rejected the Third Circuit's construction of Article III of the Agreement in a situation virtually identical to this case. United States v. Roach, 745 Fed 1252 (9th Cir. 1984). The Roach decision follows the Ninth Circuit's decision in Hopper v. United States Parole Commission, 702 F.2d 842 (9th Cir. 1983), in which Article III of the Agreement was held to be inapplicable to a detainer for parole violation. Similarly, each state court of last resort which has interpreted the question of the Agreement's applicability to a detainer for probation vio-

lation has found it inapplicable. See Clipper v. Maryland, 295 Md. 303, 455 A.2d 973 (1983); Padilla v. Arkansas, 279 Ark. 100, 648 S.W. 2d 797 (1983); State v. Knowles, 275 S.C. 312, 270 S.E.2d 133 (1980); Suggs v. Hopper, 234 Ga. 242, 215 S.E.2d 246 (1975).[4] The conflict created by the Third Circuit's decision of this uniform statute potentially affects all other party states.

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[4]Intermediate courts in three states also have found the Agreement inapplicable to probation violation detainers, People v. Jackson, 626 P.2d 723 (Colo. App. 1981); People ex rel. Capalongio v. Howard, 87 App. Div. 2d 242, 453 N.Y.S. 2d 45 (N.Y. App. Div. 1982); and Blackwell v. State, 546 S.W. 2d 828 (Tenn. Crim. App. 1976), while intermediate courts in three other states have found the Agreement inapplicable to parole violation detainers. Irby, supra; Cart v. DeRobertis, 453 N.E. 2d 153 (Ill. App. Ct. 1983); and Buchanan v. Michigan Department of Corrections, 50 Mich. App. 1, 212 N.W. 2d 745 (Mich. Ct. App. 1973).

Obviously, an agreement between so many states, the federal government and the District of Columbia should receive a consistent interpretation wherever it is in effect. The essential purpose of uniform laws, to bring consistency and predictability to state laws in matters of potential interstate concern, requires uniform interpretation. The need for consistency in interpretation is underscored where, as here, the statutes govern relationships among officials of different states. In its petition for certiorari, the State of New Jersey, Department of Corrections, aptly describes the massive confusion resulting from the situation in which parties to a single agreement have varying obligations and responsibilities depending upon the interpretation prevailing in their jurisdiction. Pet., p. 13-16. Rather than assisting

prisoners in their rehabilitation efforts with little measurable cost to the states as the Third Circuit opines, the decision here creates traps for the unwary administrator whose missteps will foreclose many meritorious probation and parole revocation proceedings.

The conflict in interpretation of the Agreement and the confusion that this divergence of opinions creates merit this Court's review.

2. The Third Circuit Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court.

In this case, the Third Circuit went beyond the traditional (or as they termed it, technical) definition of "untried indictment, information and complaint," and decided that a detainer for violation of a probationary sentence entered after a guilty plea was an "untried complaint" within the meaning of Article III of the Agreement. Pet. App. 7-14. The Court of Appeals reached this conclusion by endorsing the district court's liberal interpretation of the "broad purposes" of the Agreement and observing that, in its opinion, "[f]airness to the prisoners and proper allocation of society's resources require that detainers be promptly removed unless the prisoner has been

finally and constitutionally sentenced...." Pet. App. 12. Neither the legislative history examined by the Third Circuit nor the plain meaning of the statute itself supports the Third Circuit's decision.

The available legislative history examined by the Court of Appeals does not reveal a clearly expressed legislative intent contrary to the plain meaning of the language of the statute.[5] To the contrary, amici submit that the language of the history supports their interpretation. As observed by the petitioner, the quoted commentary merely suggests in general terms the various possible sources of detainers. Petition, p. 8. If, indeed,

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[5]The legislative history upon which the Court of Appeals relied consisted of statements of the Council of State Governments which drafted the Agreement in 1956. Pet. App. 10.

this is meant to control the meaning of the word detainers in Article III of the Agreement, the inevitable conclusion is that the phrase "any untried indictment, information or complaint" is surplusage. Such an interpretation rendering a portion of a statute plainly redundant should be avoided. Bell v. New Jersey, 51 U.S.L.W. 4647, 4651 (U.S. May 31, 1983).

The available legislative history from the Congress, developed when the United States adopted the Agreement, reveals that the House and Senate Committees on the Judiciary found "the enactment of this legislation would afford defendants in criminal cases the right to a speedy trial and diminish the possibility of convictions being vacated or reversed because of a denial of this right." H. Rep. No. 91-1018, S. Rep.

Petition, p. 8. If, indeed, this is meant to control the meaning of the word detainers in Article III of the Agreement, the inevitable conclusion is that the phrase "any untried indictment, information or complaint" is surplusage. Such an interpretation rendering a portion of a statute plainly redundant should be avoided. Bell v. New Jersey, 51 U.S.L.W. 4647, 4651 (U.S. May 31, 1983).

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No. 91-1356, reprinted in 1970 United States Code Congressional and Administrative News 4864.[6] Nowhere in the Congressional history are detainers for violation of probationary sentences or the conditions of parole mentioned. As there is no constitutional "speedy trial" right to disposition of such detainers, Moody v. Daggett, 429 U.S. 78 (1976), it necessarily follows that disposition of such detainers was not within the scope of expressed Congressional concern.[7]

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[6]This legislative history was not examined by the Court of Appeals in its effort to divine the meaning of the phrase under scrutiny.

[7]Only one state, Kentucky, has seen fit to specifically amend the Agreement to include detainers for violations of probation and parole. Kentucky Revised Statutes, Section 440.453, Enact. Acts 1976, Ch. 211, §1. The effect of that amendment, enacted before Moody, has never been triggered since it requires another party state to enact such an amendment.

In an effort to find a policy basis to support its interpretation of the Agreement's scope, the Court of Appeals assumed that a quick hearing on the revocation necessarily benefits the prisoner. This assumption is misplaced. As explained in Moody, in the context of a parole revocation hearing:

> Forcing decision immediately after imprisonment would not only deprive the parole authority of this vital information [found in the parolee's institutional record], but since the most salient factor would be the parolee's recent convictions, a decision to revoke parole would often be foreordained. Given the predictive nature of the hearing, it is appropriate that such hearing be held at the time at which prediction is both most relevant and most accurate--at the expiration of the parolee's intervening sentence.

429 U.S., at 89.

While a prisoner's not knowing the ultimate decision whether a sentence of probation will be revoked may appear

harsh and counter-rehabilitative, compelling an almost certain revocation of probation or parole and the probable imposition of the longest sentence permitted is neither fair nor a proper allocation of society's resources.

Two additional factors further undercut the Court of Appeals' analysis. First, it can be assumed safely that a parolee or probationer who has committed an offense which results in incarceration almost certainly will have his parole or probation revoked. The new conviction is itself conclusive on the question whether the underlying conduct occurred and only in the most unusual cases will this fail to persuade parole or probation authorities to take action. Secondly, even if parole or probation revocation is, by virtue of application of the Agreement, accomplished at an early date, the sentence

imposed frequently will be for a permissible range of time, rather than a specific, determinate time period. These factors weaken substantially the underlying basis for the Court of Appeals' conclusion--namely, that early disposition of detainers provides certainty as to the time of release and frees the prisoner for rehabilitation programs. The result of early disposition of parole or probation violation detainers almost certainly will be additional prison sentences for uncertain periods of time, all of which will likely lessen the prisoners' chances for participation in rehabilitation programs without providing certainty as to the date of eventual release.

The Court of Appeals was without the power to "expand[] the scope of

Article III..."[8] beyond the plain meaning of the Agreement's language as supported by the available legislative history. To expand the scope of the Agreement is a legislative function not a judicial one. Moreover, the so-called policy considerations employed by the Court of Appeals do not withstand analysis. For these additional reasons, the decision of the Court of Appeals should be reviewed.

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[8] Id., Pet. App. 13, n. 9.

Conclusion

The petition for a writ of certiorari should be granted and upon review the judgment of the Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

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